

Federal Communications Commission

DA 95-1249

FCC MAIL SECTION

JUN 14 11 36 AM '95
Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 93-164

In the Matter of

Amendment of Section 73.202(b), RM-8248
Table of Allotments,
FM Broadcast Stations.
(Williamstown, West Virginia)

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: June 6, 1995; Released: June 14, 1995

By the Chief, Allocations Branch:

1. At the request of James Phillips ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 4120 (1993), proposing the allotment of Channel 245A at Williamstown, West Virginia, as its first local aural transmission service. Petitioner filed comments in support of the proposal reaffirming his intention to apply for the channel, if allotted. Opposing comments were filed by PBBC, Inc. ("PBBC"), licensee of Station WXIL-FM, Channel 236B, Parkersburg, West Virginia. Petitioner filed reply comments.

2. In its comments, PBBC states that Williamstown has a population of 2,774¹ and is located in Wood County which has a population 86,915. Williamstown is a part of the Marietta, Ohio-Parkersburg, West Virginia Metropolitan Statistical Area. Since the principal shopping area is in Vienna, West Virginia, PBBC contends that Williamstown "appears to be a 'bedroom' community." PBBC also asserts that the market is already served by least 12 radio stations, four AM and eight FM. PBBC states that the total retail sales for the entire market amount to slightly over one billion dollars. Therefore, using traditional ratios of radio revenues as a portion of retail sales, PBBC argues that the market cannot support the present complement of stations. Consequently, PBBC submits that although Williamstown may be a community for allotment purposes, it is only one community within a market that already has numerous "voices" to serve its interests and needs, as well as to share the available revenue. PBBC asserts that Williamstown is a small community that is not unique and is in a market that is remarkably homogeneous.

3. PBBC alleges that although under different circumstances, the Commission specifically noted the numerous services available to Williamstown in *Ravenswood and Williamstown, West Virginia*, 7 FCC Rcd 5116 (1992). There, the Commission found that a first local aural transmission service to Williamstown was insufficient to offset a

loss of service elsewhere. Therefore, asserts PBBC, it was deemed that a first local aural transmission service to Williamstown was not sufficient to offset the cost of providing it. Moreover, PBBC recognizes that the Commission's policy has been not to consider economic impact in connection with new allotments. However, PBBC notes that the Commission has indicated the possibility of instituting a freeze on FM stations, although no specific details were given.² PBBC recommends that the Commission realistically appraise its public interest responsibilities and tailor its policies in furtherance of those responsibilities. Accordingly, PBBC urges that petitioner's proposal be denied.

4. In its reply comments, petitioner argues that PBBC has failed to raise any persuasive reasons to deny the proposal. Petitioner refutes PBBC's contention that "there is no identifiable need for Williamstown to have its own 'voice'." Indeed, states petitioner, Williamstown is incorporated and is a "community" for allotment purposes. Petitioner submits documentation showing that Williamstown has easily definable boundaries, a high school, police, fire and water departments, a mayor-council government, sewage plant, library and emergency service. Williamstown also has its own telephone directory, businesses, churches and organizations. Petitioner argues that these are factors the Commission has found important when deciding whether a community deserves its own local aural transmission service, citing *Princeville, Hawaii*, 67 RR 2d 644 (1990); *Evans, Georgia*, 67 RR 113 (1989); and *Fairforest, South Carolina*, 64 RR 2d 670 (1987). In this instance, petitioner claims that the facts demonstrate that Williamstown is an independent community that can support its own radio station. Furthermore, petitioner asserts that, and PBBC concedes, the Commission no longer considers economic impact issues when making new allotments, citing *Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 FCC Rcd 638 (1988), *recon. denied* 4 FCC Rcd 2276 (1989). Moreover, petitioner states that PBBC's reliance on *Ravenswood*, *supra*, is misplaced. In *Ravenswood*, the Commission found, *inter alia*, that a change of community from Ravenswood to Williamstown would have unfairly resulted in the loss of service to over 30,000 people. The Commission did not state however, that Williamstown was undeserving of a first local aural transmission service. Thus, unlike in *Ravenswood*, here, the proposed allotment would result in no loss of service, but would instead provide Williamstown with its first local aural transmission service. Accordingly, petitioner contends that PBBC's arguments concerning the viability of a new station at Williamstown are speculative and should be disregarded.

5. PBBC's arguments regarding competitive and economic hardships of a new allotment at Williamstown raise issues which the Commission has already determined not relevant in either a licensing or allotment context. See *FM Channel Assignments; Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, *supra*; *Cheyenne, Wyoming*, 8 FCC Rcd 4473 (1993). Consequently, there is no basis under the current state of Commission precedent for consideration of those issues. In a related context, there is no Commission requirement for James Phillips or any other party to demonstrate a "demand" or

¹ Population figures taken from the 1990 U.S. Census.

² PBBC cites to an article in *Broadcasting and Cable*, August 2,

1993, p. 14.

need for an allotment aside from the already stated willingness of Mr. Phillips to apply for the Channel 245A allotment at Williamstown and construct the proposed facilities.

6. After careful consideration of the information before us, we believe the public interest would be served by the allotment of Channel 245A at Williamstown, West Virginia, since it would provide the community with its first local aural transmission service. Channel 245A can be allotted to Williamstown in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.9 kilometers (4.3 miles) southwest to avoid a short-spacing to Station WRRK(FM), Channel 245B, Braddock, Pennsylvania.³ Since Williamstown is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been obtained.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 31, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Williamstown, West Virginia	245A

8. The window period for filing applications will open on **July 31, 1995**, and close on **August 31, 1995**.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

³ The coordinates for Channel 245A at Williamstown are North

Latitude 39-22-18 and West Longitude 81-31-04.